HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

WRIT APPEAL No. 1163 of 2005

Between:

The Assistant Provident Fund Commissioner
& Authority o/o Regional ProidentFund
Commissioner, Employees Provident Fund
Organisation, Sub-Regional Office,
Padmavathi Buildings, Lakshmipuram,
Guntur and another .. Appellants

AND

M/s Vignan Education Development
Society, NH5, Prakash Nagar, Doddavarpadu
Ongole and another ..Respondents.

Counsel for the Appellants: Smt Ch.Lakshmi Kumari.

Counsel for the Respondents. Sri AVLS Prakash for
Sri N.Venkatrama Reddy

Dated: February 8, 2006

::JUDGMENT::

Per G.S.Singhvi, C.J.

This appeal by Assistant Provident Fund Commissioner, Guntur and Enforcement Officer, Ongole is directed against order dated 11th March, 2005 passed by the learned Single Judge in Writ Petition No. 4927 of 2005 whereby he quashed the warrant of arrest dated 24-2-2005 issued against the Director of respondent No.1.

Respondent No.1 is an educational society functioning at Ongole, Prakasam District. Assistant Provident Fund Commisioner, Guntur sent letter dated 19-9-2003 to respondent No.1 requiring it to furnish information in Form V-A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the Act'). It,

however, appears that no further action was taken in the matter for a period of one year and four months. On behalf of respondent No.1, reply dated 20-1-2005 was sent stating therein that it is not covered by the provisions of the Act because it had employed less than 20 persons. Thereafter, Assistant Provident Fund Commissioner issued notice to the Director of respondent No.1 requiring him to appear in person on 1-3-2005 and produce the summoned records with a stipulation that if he fails to do so, a warrant of arrest will be issued without further notice. The Director of respondent No.1 did not respond to the notice issued by the Assistant Provident Fund Commissioner. Therefore, the latter issued warrant of arrest dated 24-2-2005.

Respondent No.1 challenged the warrant of arrest in Writ Petition No.4927 of 2005 primarily on the ground that notice
dated 24-2-2005 had not been served upon him and that appellant No.1 did not have any power, authority and jurisdiction to issue warrant of arrest.

The learned Single Judge allowed the writ petition and quashed the warrant of arrest by observing that the same was issued without application of mind. The learned Single Judge then held that the mode adopted by the Assistant Provident Fund Commissioner for securing the presence of the Director of respondent No.1 was indicative of gross abuse and misuse of power by the officer. In the course of his order, the learned Single Judge also observed that the Civil Court does not have the power to get the defendant arrested on the sole ground that he does not respond to the notice and, therefore, the action taken by the Assistant Provident Fund Commissioner to issue warrant of arrest was not at all warranted.

At the commencement of the hearing, learned counsel for respondent No.1 gave out that in furtherance of the direction issued by the learned Single Judge in the operative portion of the impugned order, his client had appeared before the Assistant Provident Fund Commissioner on 28-3-2005 but no enquiry was held. Learned counsel for the appellants submitted that the statement of the learned counsel for respondent No.1 is not correct. According to her, Director of respondent No.1 did not appear before the Assistant Provident Fund Commissioner on
28-3-2005.

In our opinion, it is not necessary to decide the controversy whether or not the Director of respondent No.1 had appeared before Assistant Provident Fund Commissioner concerned on

28-3-2005 and we feel that it would be in the interest of justice to ensure that the proceeding initiated under Section 7(1) of the Act for determination of the applicability thereof to the establishment of respondent No.1 is brought to a close at the earliest. Therefore, we direct that respondent No.1 shall, through its Director, appear before appellant No.1 on March 11, 2006 and produce evidence to show that it is not covered by the definition of the term 'employer' or that the provisions of the Act are otherwise not applicable to it. Within next six weeks, the competent authority shall, after making such enquiry as may be considered necessary in the facts and circumstances of the case, pass final order on the issue of applicability of the Act to respondent No.1.

The appeal is disposed of in the aforesaid terms.

While disposing of the appeal, we make it clear that the observations made by the learned Single Judge on the competence of the Assistant Provident Fund Commissioner or any other authority exercising power under Section 7-A to issue warrant of arrest in the case of non-compliance of the provisions of the Act shall not be treated as laying down law on the subject and shall not be treated as a precedent for future. At the same time, we make it clear that if the competent authority, in exercise of its power under Section 7(2) of the Act, issues warrant of arrest, then the aggrieved person shall be entitled to avail proper legal remedy against the same.

G.S.SINGHVI, C.J.

February 8, 2006

G.BHAVANI PRASAD, J.

GRR / svs